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May 30, 2019

**VIA CERTIFIED MAIL #7061 0600 0000 4136 0501  
RETURN RECEIPT REQUESTED**

Jason Coffman  
3280 Peachtree Road, NE  
Suite 700  
Atlanta, GA 30305

**RE: Lance Toland v. The Phoenix Insurance Company, et al**  
USDC, Northern District of Georgia, Atlanta Div.  
Civil Action File No. 1:16-cv-04236-ELR  
Our File No.: 05657-124927

Dear Jason:

Enclosed please find The Phoenix Insurance Company's Offer of Settlement under O.C.G.A. § 9-11-68.

Very truly yours,

DREW, ECKL & FARNHAM, LLP

A handwritten signature in cursive script that reads "Karen K. Karabinos".

Karen K. Karabinos

Enclosure:

Offer of Settlement

8855688/1  
05657-124927



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>LANCE TOLAND,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>CIVIL ACTION NO.:</b>
	)	<b>1:16-cv- 04236-ELR</b>
<b>THE PHOENIX INSURANCE</b>	)	
<b>COMPANY and FICTITIOUS PARTIES</b>	)	
<b>“A,” AND “B,” and those other persons,</b>	)	
<b>entities, or corporations, whose names</b>	)	
<b>are unknown to Plaintiff at this time,</b>	)	
<b>however, will be added by amendment</b>	)	
<b>when ascertained,</b>	)	
<b>Defendants.</b>	)	

**THE PHOENIX INSURANCE COMPANY’S  
OFFER OF SETTLEMENT UNDER O.C.G.A. § 9-11-68**

COMES NOW The Phoenix Insurance Company (“Phoenix”), Defendant in the above-styled action, and makes this offer of settlement to Plaintiff Lance Toland (“Plaintiff Toland”) under O.C.G.A. § 9-11-68.

The following is pertinent language of O.C.G.A § 9-11-68 (b)(1):

If a defendant makes an offer of settlement which is rejected by the plaintiff, then defendant shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred by the defendant or on the defendant's behalf from the date of the rejection of the offer of settlement through the entry of judgment if the final judgment is one of no liability or the final judgment

obtained by the plaintiff is less than 75 percent of such offer of settlement.

This offer of settlement is made more than thirty (30) days prior to trial of this case and is made pursuant to O.C.G.A. § 9-11-68. *See Wheatley v. Moe's Sw. Grill, LLC*, 580 F. Supp. 2d 1324, 1329 (N.D. Ga. 2008) ("Because O.C.G.A. § 9-11-68 is substantive in nature and does not conflict with a federal law or rule of procedure, the [federal] Court is bound to apply it to this case."); *accord Earthcam, Inc. v. OxBlue Corp.*, 658 F. App'x 526, 529 (11th Cir. 2016).

1.

This compromise offer of settlement is made for the purposes specified in O.C.G.A. § 9-11-68 and is not to be construed either as an admission that Phoenix is liable in this action or that Plaintiff Toland has suffered any damage. *See Maguire v. Federal Crop Ins. Corp.*, 181 F.2d 320 (5th Cir. 1950).

2.

This offer of settlement is made by Phoenix to Plaintiff Toland.

3.

The total amount of Phoenix's offer of settlement to Plaintiff Toland is \$50,000.00 (hereinafter referred to as "Settlement Amount").

4.

The Settlement Amount is to resolve all claims that have been made, or could have been made, by Plaintiff Toland against Phoenix, including but not limited to costs of litigation and attorney's fees, as well as claims of bad faith and punitive damages. O.C.G.A. § 9-11-68(a)(6) and (7).

5.

Of the Settlement Amount, FIFTY THOUSAND DOLLARS (\$50,000.00) is allocated to settle any claim by the Plaintiff Toland for punitive damages, as there is no basis for punitive damages. O.C.G.A. § 9-11-68(a)(6); *Chadwick v. Brazell*, 331 Ga. App. 373, 375-77, 771 S.E.2d 75, 78-79 (2015).

6.

This offer of settlement is being served via certified mail in the form required by O.C.G.A. § 9-11-5 and O.C.G.A. § 9-11-68.

7.

Upon payment of the settlement amount, Plaintiff Toland will dismiss his claims against Phoenix with prejudice. Plaintiff Toland will execute a full and final release of Plaintiff Toland's claims with confidentiality and indemnity from any liens of lienholders or security interest holders.

8.

This offer of settlement shall remain open for the required period specified by O.C.G.A. § 9-11-68.

9.

This offer of settlement shall be deemed rejected, and thereafter withdrawn, unless accepted in writing by Plaintiff Toland within the time limit specified by O.C.G.A. § 9-11-68.

10.

This offer of settlement is made solely for the purposes specified in O.C.G.A. § 9-11-68 and is not to be construed for any other purposes. Pursuant to O.C.G.A. § 9-11-68, this document shall not be filed with the Court, but includes a certificate of service in the form required by O.C.G.A. § 9-11-5.

11.

Pursuant to O.C.G.A. § 9-11-68(a)(4), this offer requires the following conditions:

(a) a full and final release and indemnity agreement reflecting full satisfaction of all claims executed by Plaintiff Toland releasing all of Plaintiff Toland's claims against Phoenix and all other potentially liable parties; including a provision in the agreement indemnifying Phoenix, and specifying that Plaintiff

Toland's counsel will hold the settlement amount in trust until all settlement documents are executed and a Voluntary Dismissal with Prejudice filed by Plaintiff Toland;

(b) a confidentiality provision as to the amount of the settlement and offer of settlement; and

(c) a Voluntary Dismissal with Prejudice filed by Plaintiff Toland of all claims and causes of action against Phoenix in the above-referenced action.

Respectfully submitted this 30<sup>th</sup> day of May, 2019.

DREW ECKL & FARNHAM, LLP

/s/ Karen K. Karabinos  
Georgia Bar No. 423906

/s/ Mary Alice L. Jasperse  
Georgia Bar No. 971077  
**Counsel for Defendant Phoenix**

303 Peachtree Street  
Suite 3500  
Atlanta, GA 30308  
Phone: (404) 885-1400  
Fax: (404) 876-0992

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have also mailed a copy of **THE PHOENIX  
INSURANCE COMPANY'S OFFER OF SETTLEMENT UNDER O.C.G.A.  
§ 9-11-68** via U.S. Certified Mail to the following counsel of record:

Jason H. Coffman  
170 Mitchell Street, SW  
Atlanta, GA 30303

This 30th day of May 2019.

/s/ Karen K. Karabinos  
Georgia Bar No. 423906  
**Counsel for Defendant Phoenix**

303 Peachtree Street  
Suite 3500  
Atlanta, GA 30308  
Phone: (404) 885-1400  
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